

# Code of Virginia

Title 55 PROPERTY AND CONVEYANCES  
CHAPTER 26

## VIRGINIA NONSTOCK CORPORATION ACT

**(Selected Provisions)**

With amendments through July 1, 2002

**Title 13 CORPORATIONSS  
CHAPTER 10**

**VIRGINIA  
NONSTOCK CORPORATION  
ACT**

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### **§ 13.1-801. Short title.**

This chapter shall be known as the "Virginia Nonstock Corporation Act."  
(Code 1950, § 13.1-201; 1956, c. 428; 1985, c. 522.)

### **§ 13.1-814.1. Special provisions for community associations.**

A. As used in this section, "community association" shall mean a corporation incorporated under this chapter or under former Chapter 2 of this title which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the corporation.

B. Notwithstanding the requirements of §§ 13.1-851, 13.1-852, 13.1-855, 13.1-856, 13.1-857, 13.1-858 and 13.1-862, the provisions set forth in those sections need not be set forth in the articles of incorporation of a community association and shall be effective if set forth in the bylaws.

C. Notwithstanding the provisions of §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899, the provisions of the bylaws of any community association in existence on or before January 1, 1986, shall continue to govern (i) the procedures for and election of members of the board of directors, (ii) the amendment of the bylaws, (iii) the sale, release, exchange or disposition of all or substantially all of the corporation's property, whether or not in the usual and regular course of business, and (iv) the corporation's ability to mortgage, pledge, or dedicate to repayment of indebtedness, or otherwise encumber its property; provided, that the community association may, in accordance with its current articles of incorporation and bylaws, vote to amend its corporate documents to become subject to §§ 13.1-855, 13.1-856, 13.1-892 and 13.1-899. (1986, c. 532.)

### **§ 13.1-823. Bylaws.**

A. The initial bylaws of the corporation shall be adopted by its incorporators or board of directors.

B. The bylaws of a corporation may contain any provision for the regulation or management of the business of the corporation that is not inconsistent with law or the articles of incorporation.  
(Code 1950, §§ 13-234, 13.1-212; 1956, c. 428; 1985, c. 522.)

### **§ 13.1-826. General powers.**

A. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business, including, without limitation, power to:

1. Sue and be sued, complain and defend, in its corporate name.
2. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
3. Purchase, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
4. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
5. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and with, shares or other interests in, or obligations of, any other domestic or foreign corporations organized for any purpose, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof; and to guarantee the payment of any bonds or other obligations of any association, partnership, or individual or any other domestic or foreign corporation organized for any purpose.

6. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
7. Lend money, invest and reinvest its funds, and hold real and personal property as security for repayment.
8. Transact its business, locate offices and exercise the powers granted by this chapter within or without this Commonwealth.
9. Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation and lend them money and credit.
10. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this Commonwealth, for managing or regulating the business of the corporation.
11. Make donations for the public welfare or for religious, charitable, scientific, literary or educational purposes.
12. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and compensation plans for any or all of the current or former directors, officers, employees and agents of the corporation or any of its subsidiaries.
13. Insure for its benefit the life of any director, officer or employee of the corporation and continue such insurance after the relationship terminates.
14. Cease its corporate activities and surrender its corporate franchise.
15. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

B. Each corporation other than a banking corporation, an insurance corporation, a savings and loan association or a credit union shall have power to enter into partnership agreements, joint ventures, or other association of any kind with other corporations, whether organized under the laws of this Commonwealth or otherwise, or with any individual or individuals.

C. Privileges and powers conferred and restrictions and requirements imposed by other titles of the Code on railroads or other public service companies, banking corporations, insurance corporations, savings institutions, credit unions, industrial loan associations or other special types of corporations shall not be deemed repealed or amended by any provision of this chapter except where specifically so provided.

D. Each corporation which is deemed a private foundation (as defined in § 509 of the Internal Revenue Code), unless its articles of incorporation expressly provide otherwise, shall distribute its income and, if necessary, principal, for each taxable year at such time and in such manner as not to subject such corporation to tax under § 4942 of the Internal Revenue Code. Such corporation shall not engage in any act of self-dealing (as defined in § 4941 (d) of the Internal Revenue Code), retain any excess business holdings (as defined in § 4943 (c) of the Internal Revenue Code), make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures (as defined in § 4945 (d) of the Internal Revenue Code). This subsection shall apply to any corporation organized under this chapter after December 31, 1969; and to any corporation organized before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508 (e) (2) (B) or (C) of the Internal Revenue Code shall apply, or unless the board of directors of such corporation shall elect that such restrictions as are contained in this subsection shall not apply by filing written notice of such election with the Attorney General and the clerk of the Commission on or before December 31, 1971. Each reference to a section of the Internal Revenue Code made in this subsection shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws. (Code 1950, § 13.1-204.1; 1975, c. 500; 1985, c. 522; 1996, c. 77.)

### **§ 13.1-837. Members.**

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or, if the articles of incorporation so provide, in the bylaws. A corporation may issue certificates evidencing membership therein. Memberships shall not be transferable. Members shall not have voting or other rights except as

provided in the articles of incorporation or if the articles of incorporation so provide, in the bylaws. Members of any corporation existing on January 1, 1957, shall continue to have the same voting and other rights as before January 1, 1957, until changed by amendment of the articles of incorporation. (Code 1950, § 13.1-211; 1956, c. 428; 1958, c. 564; 1982, c. 182; 1985, c. 522.)

**§ 13.1-838. Annual meeting.**

A. A corporation shall hold annually at a time stated in or fixed in accordance with the bylaws a meeting of the members.

B. Annual meetings of members may be held at such place, either in or out of this Commonwealth, as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

**§ 13.1-839. Special meeting.**

A. A corporation shall hold a special meeting of members on call of the chairman of the board of directors, the president, the board of directors, or the person or persons authorized to do so by the articles of incorporation or bylaws. In the absence of a provision in the articles of incorporation or bylaws stating who may call a special meeting of members, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

B. If not otherwise fixed under § 13.1-840 or § 13.1-844, the record date for determining members entitled to demand a special meeting is the date the first member signs the demand.

C. Special members' meetings may be held at such place in or out of this Commonwealth as may be provided in the bylaws or, where not inconsistent with the bylaws, in the notice of the meeting.

D. Only business within the purpose or purposes described in the meeting notice required by subsection C of § 13.1-842 may be conducted at a special members' meeting.

(Code 1950, § 13.1-213; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

**§ 13.1-841. Action without meeting.**

A. Action required or permitted by this chapter to be taken at a meeting of the members may be taken without a meeting and without action by the board of directors if the action is taken by all of the members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed by all of the members entitled to vote on the action, and delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records. Any action taken by unanimous written consent shall be effective according to its terms when all consents are in possession of the corporation. A member may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time that all consents are in the possession of the corporation. Action taken under this section is effective as of the date specified therein, provided that the consent states the date of execution by each member.

B. If not otherwise determined under § 13.1-844, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection A of this section.

C. A consent signed under this section has the effect of a unanimous vote of voting members, and may be described as such in any articles or document filed with the Commission under this chapter.

D. If this chapter requires that notice of proposed action be given to nonvoting members and the action is to be taken by unanimous consent of the voting members, the corporation shall give its nonvoting members written notice of the proposed action at least ten days before the action is taken. The notice shall contain or be accompanied by the same material that under this chapter would have been required to be sent to nonvoting members in a notice of meeting at which the proposed action would have been submitted to the members for action. (Code 1950, § 13.1-216; 1956, c. 428; 1985, c. 522.)

#### **§ 13.1-842. Notice of meetings.**

A. 1. A corporation shall give members written notice of the date, time and place of each annual and special members' meeting. Such notice shall be given, either personally or by mail, no less than ten nor more than sixty days before the date of the meeting except that notice of a members' meeting to act on an amendment of the articles of incorporation, a plan of merger, a proposed sale of assets pursuant to § 13.1-900 or the dissolution of the corporation shall be given not less than twenty-five nor more than sixty days before the meeting.

2. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may publish such notice at least once a week for two successive calendar weeks in a newspaper published in the city or county in which the registered office is located, or having a general circulation therein, the first publication to be not more than sixty days, and the second not less than seven days, before the date of the meeting.

3. In lieu of delivering notice as specified in subdivision 1 of this subsection, the corporation may give members written notice of the date, time and place of each annual and special members' meeting by a form of electronic transmission consented to by the member to whom the notice is given. A notice given by a form of electronic transmission shall be given as far in advance of the meeting as would be required if the notice was delivered as specified in subdivision 1 of this subsection. Any such consent of a member shall be revocable by the member by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

4. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to each member entitled to vote at such meeting.

B. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not state the purpose or purposes for which the meeting is called.

C. Notice of a special meeting shall state the purpose or purposes for which the meeting is called.

D. If not otherwise fixed under § 13.1-840 or § 13.1-844, the record date for determining members entitled to notice of and to vote at an annual or special meeting is the close of business on the day before the effective date of the notice to the members.

E. Unless the bylaws require otherwise, if an annual or special meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or shall be fixed by the bylaws, however, the notice of the adjourned meeting shall be given under this section to persons who are members as of the new record date.

F. Notice given pursuant to subdivision A 3 of this section shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the member has consented to receive notice; (ii) if by electronic mail, when directed to the record address of the member or to such other electronic mail address at which the member has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the member of such specific posting when such notice is directed to an address at which the member has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (iv) if by any other form of electronic transmission, when consented to by the member. An affidavit of the secretary or other agent of the corporation that the notice has been given by a

form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.  
(Code 1950, § 13.1-214; 1956, c. 428; 1958, c. 564; 1960, c. 214; 1985, c. 522; 1986, c. 529; 2002, c. 285.)

#### **§ 13.1-843. Waiver of notice of meetings.**

A. A member may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time of the meeting that is the subject of such notice. The waiver shall be in writing, be signed by the member entitled to such notice, and be delivered to the secretary of the corporation for inclusion in the minutes or filing with the corporate records.

B. A member who attends a meeting:

1. Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and
2. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented. (Code 1950, § 13.1-215; 1956, c. 428; 1985, c. 522.)

#### **§ 13.1-846. Voting entitlement of members.**

A. Members shall not be entitled to vote except as the right to vote shall be conferred by the articles of incorporation or if the articles of incorporation so provide, in the bylaws.

B. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail. If authorized by the board of directors, any requirement that any vote of the members be made by written ballot may be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission shall either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the member or the member's proxy.

C. Unless the articles of incorporation provide otherwise, in the election of directors every member, regardless of class, is entitled to one vote for as many persons as there are directors to be elected at that time and for whose election the member has a right to vote.

D. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power. (Code 1950, § 13.1-217; 1956, c. 428; 1975, c. 500; 1982, c. 182; 1985, c. 522; 2002, c. 285.)

#### **§ 13.1-847. Proxies.**

A. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy. In either event, the vote of the member or the member's proxy may be submitted by electronic transmission if authorized as provided in subsection B of § 13.1-846.

B. Without limiting the manner in which a member may authorize another person or persons to act for him as proxy pursuant to subsection A of this section, the following shall constitute a valid means by which a member may grant such authority:

1. A member may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the member or his authorized officer, director, employee or agent signing such writing or causing his signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.
2. A member may authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such

transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which the inspectors of election can determine that the telegram, cablegram or other electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors, or if there are no inspectors, such other persons making that determination, shall specify the information upon which they relied.

3. Any copy, facsimile telecommunications or other reliable reproduction of the writing or transmission created pursuant to this subsection may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

C. An appointment of a proxy becomes effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

D. An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

1. A creditor of the corporation who extended it credit under terms requiring the appointment; or
2. An employee of the corporation whose employment contract requires the appointment.

E. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his authority under the appointment.

F. An appointment made irrevocable under subsection D of this section is revoked when the interest with which it is coupled is extinguished.

G. Subject to § 13.1-848 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

H. Any fiduciary who is entitled to vote any shares may vote such shares by proxy.  
(1985, c. 522; 1999, c. 101; 2002, c. 285.)

#### **§ 13.1-848. Corporation's acceptance of votes.**

A. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

B. If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

1. The member is a domestic or foreign corporation, association, estate, trust or partnership and the name signed purports to be that of an officer, partner or agent of the entity;
2. The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or
3. The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

C. Notwithstanding the provisions of subdivision 2 of subsection B, in any case in which the will, trust agreement, or other instrument under which a fiduciary purports to act contains directions for voting, or for the execution and delivery of proxies for voting, such directions shall be binding upon the fiduciary and upon the corporation if a copy thereof has been furnished the corporation.

D. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

E. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

F. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise. (1985, c. 522.)

**§ 13.1-849. Quorum and voting requirements for voting groups of members.**

A. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter or the articles of incorporation. Members entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those members exists with respect to that matter.

B. Once a member is present at a meeting it is deemed present for quorum purposes for the remainder of the meeting and for adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

C. Less than a quorum may adjourn a meeting.

D. The election of directors is governed by § 13.1-852. (Code 1950, § 13.1-219; 1956, c. 428; 1985, c. 522.)

**§ 13.1-852. Voting for directors; cumulative voting.**

A. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

B. Members do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

C. A statement included in the articles of incorporation that "all of a designated voting group of members are entitled to cumulate their votes for directors" (or words of similar import) means that the members designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

D. Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

2. A member who has the right to cumulate his votes gives notice to the secretary of the corporation not less than forty-eight hours before the time set for the meeting of his intent to cumulate his votes during the meeting. If one member gives this notice, all other members in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.  
(Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522.)

#### **§ 13.1-853. Requirement for and duties of board of directors.**

A. Each corporation shall have a board of directors.  
B. All corporate powers shall be exercised by or under the authority of, and the business of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation. (Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

#### **§ 13.1-854. Qualification of directors.**

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this Commonwealth or a member of the corporation unless the articles of incorporation or bylaws so prescribe. (Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

#### **§ 13.1-855. Number and election of directors.**

A. A board of directors shall consist of one or more individuals, with the number specified in or fixed in accordance with the bylaws, or if not specified in or fixed in accordance with the bylaws, with the number specified in or fixed in accordance with the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation.

B. The members may adopt a bylaw fixing the number of directors and may direct that such bylaw not be amended by the board of directors. If a bylaw states a fixed number of directors and the board of directors has the right to amend the bylaw, it may by amendment to the bylaw increase or decrease the number of directors, but to the extent that the corporation has members with voting privileges only the members may increase or decrease by more than thirty percent the number of directors last elected by the members.

C. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the members or the board of directors. However, to the extent that the corporation has members with voting privileges, only the members may change the range for the size of the board of directors or change from a fixed to a variable-range size board or vice versa.

D. Directors shall be elected or appointed in the manner provided in the articles of incorporation. If the corporation has members with voting privileges, directors shall be elected at the first annual members' meeting and at each annual meeting thereafter unless their terms are staggered under § 13.1-858.

E. No individual shall be named or elected as a director without his prior consent.  
(Code 1950, § 13.1-220; 1956, c. 428; 1983, c. 393; 1985, c. 522.)

#### **§ 13.1-857. Terms of directors generally.**

A. In the absence of a provision in the articles of incorporation fixing a term of office, the term of office for a director shall be one year.

B. The directors constituting the initial board of directors shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation.

C. A decrease in the number of directors does not shorten an incumbent director's term.

D. The term of a director elected by the board of directors to fill a vacancy expires at the next members' meeting at which directors are elected.

E. Except in the case of ex-officio directors, despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors. (Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1986, c. 529.)

#### **§ 13.1-859. Resignation of directors.**

A. A director may resign at any time by delivering written notice to the board of directors, its chairman, the president, or the secretary.

B. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at the later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

C. Any person who has resigned as a director of a corporation, or whose name is incorrectly on file with the Commission as a director of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation of a director, a corporation may file an amended annual report with the Commission indicating the resignation of the director and the successor in office. (1985, c. 522; 1991, c. 124.)

#### **§ 13.1-860. Removal of directors.**

A. The members may remove one or more directors with or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only with cause.

B. If a director is elected by a voting group of members, only the members of that voting group may participate in the vote to remove him.

C. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him constitutes a majority of the votes entitled to be cast at an election of directors of the voting group or voting groups by which the director was elected.

D. If a corporation has no members, a director may be removed pursuant to procedures set forth in the articles of incorporation or bylaws, and if none are provided, a director may be removed by such vote as would suffice for his election.

E. A director may be removed only at a meeting called for the purpose of removing him. The meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

F. Upon the removal of a director, the corporation may file an amended annual report with the Commission indicating the removal of the director and the successor in office. (Code 1950, § 13.1-221; 1956, c. 428; 1985, c. 522; 1987, c. 177; 1991, c. 124.)

**§ 13.1-862. Vacancy on board of directors.**

A. Unless the articles of incorporation provide otherwise, if a vacancy occurs on the board of directors, including a vacancy resulting from an increase:

1. The members may fill the vacancy;
2. The board of directors may fill the vacancy; or
3. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

B. Unless the articles of incorporation provide otherwise, if the vacant office was held by a director elected by a voting group of members, only the members of that voting group are entitled to vote to fill the vacancy if it is filled by the members.

C. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under subsection B of § 13.1-859 or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

D. The corporation may file an amended annual report with the Commission indicating the filling of a vacancy. (Code 1950, § 13.1-222; 1956, c. 428; 1985, c. 522; 1991, c. 124.)

**§ 13.1-863. Compensation of directors.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. (1985, c. 522.)

**§ 13.1-864. Meetings of board of directors.**

A. The board of directors may hold regular or special meetings in or out of this Commonwealth.

B. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. (Code 1950, § 13.1-225; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

**§ 13.1-865. Action without meeting of board of directors.**

A. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents stating the action taken, signed by each director either before or after the action taken, and included in the minutes or filed with the corporate records reflecting the action taken.

B. Action taken under this section becomes effective when the last director signs the consent, unless the consent specifies a different effective date, in which event the action taken is effective as of the date specified therein provided the consent states the date of execution by each director.

C. A consent signed under this section has the effect of a meeting vote and may be described as such in any document. (1985, c. 522.)

**§ 13.1-866. Notice of directors' meetings.**

A. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

B. Special meetings of the board of directors shall be held upon such notice as is prescribed in the articles of incorporation or bylaws, or when not inconsistent with the articles of incorporation or bylaws, by resolution of the board of directors. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

C. Notwithstanding any provision of this chapter to the contrary, a notice of the date, time, place or purpose of a regular or special meeting of the board of directors may be given by a form of electronic transmission consented to by the director to whom the notice is given. Any such consent of a director shall be revocable by the director by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the director has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the director of such specific posting when such notice is directed to an address at which the director has consented to receive notice, upon the later of such posting or the giving of such separate notice; and (d) if by any other form of electronic transmission, when consented to by the director. An affidavit of the secretary or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. (1985, c. 522; 2002, c. 285.)

**§ 13.1-867. Waiver of notice by director.**

A. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided in subsection B of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

B. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. (1985, c. 522.)

**§ 13.1-868. Quorum and voting by directors.**

A. Unless the articles of incorporation or bylaws require a greater or lesser number for the transaction of all business or any particular business, a quorum of a board of directors consists of:

1. A majority of the fixed number of directors if the corporation has a fixed board size; or
2. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

B. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined by subsection A of this section.

C. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

D. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (i) he objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting specified business at the meeting; or (ii) he votes against, or abstains from, the action taken.

E. Whenever this chapter requires the board of directors to take any action or to recommend or approve any proposed corporate act, such action, recommendation or approval shall not be required if the proposed action or corporate act is adopted by the unanimous consent of members.

(Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522; 1992, c. 471.)

#### **§ 13.1-869. Committees.**

A. Unless the articles of incorporation or the bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

B. The creation of a committee and appointment of directors to it shall be approved by the greater of (i) a majority of all the directors in office when the action is taken, or (ii) the number of directors required by the articles of incorporation or bylaws to take action under § 13.1-868.

C. Sections 13.1-864 through 13.1-868, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

D. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under § 13.1-853, except that a committee may not:

1. Approve or recommend to members action that this Act requires to be approved by members, provided that the executive committee of the board of directors may exercise the authority of the board of directors to approve any amendment of the articles of incorporation if so authorized by the articles of incorporation;
2. Fill vacancies on the board or on any of its committees;
3. Amend articles of incorporation pursuant to § 13.1-885;
4. Adopt, amend, or repeal the bylaws;
5. Approve a plan of merger not requiring member approval.

E. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 13.1-870.

(Code 1950, § 13.1-224; 1956, c. 428; 1975, c. 500; 1977, c. 435; 1985, c. 522.)

#### **§ 13.1-870. General standards of conduct for directors.**

A. A director shall discharge his duties as a director, including his duties as a member of a committee, in accordance with his good faith judgment of the best interests of the corporation.

B. Unless he has knowledge or information concerning the matter in question that makes reliance unwarranted, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

1. One or more officers or employees of the corporation whom the director believes, in good faith, to be reliable and competent in the matters presented;

2. Legal counsel, public accountants, or other persons as to matters the director believes, in good faith, are within the person's professional or expert competence; or
3. A committee of the board of directors of which he is not a member if the director believes, in good faith, that the committee merits confidence.

C. A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section.

D. A person alleging a violation of this section has the burden of proving the violation. (1985, c. 522.)

#### **§ 13.1-870.1. Limitation on liability of officers and directors; exception.**

A. Except as otherwise provided in this section, in any proceeding brought by or in the right of a corporation or brought by or on behalf of members of the corporation, the damages assessed against an officer or director arising out of a single transaction, occurrence, or course of conduct shall not exceed the lesser of:

1. The monetary amount including the elimination of liability, specified in the articles of incorporation or, if approved by the members, in the bylaws as a limitation on or elimination of the liability of the officer or director; or
2. The greater of (i) \$100,000, or (ii) the amount of the cash compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed.

B. In any proceeding against an officer or director who receives compensation from a corporation exempt from income taxation under § 501 (c) of the Internal Revenue Code for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the corporation during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an exempt corporation without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

D. No limitation on or elimination of liability adopted pursuant to this section may be affected by any amendment of the articles of incorporation or bylaws with respect to any act or omission occurring before such amendment.

E. 1. Notwithstanding the provisions of this section, in any proceeding against an officer or director who receives compensation from a community association for his services, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

2. The liability of an officer or director shall not be limited as provided in this subsection if the officer or director engaged in willful misconduct or a knowing violation of the criminal law.

3. As used in this subsection, "community association" shall mean a corporation incorporated under this chapter which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership of specific real estate, to be a member of the incorporated association. (1987, cc. 59, 257; 1988, c. 561; 1989, c. 422.)

**§ 13.1-870.2. Limitation on liability of officers and directors; additional exception.**

A. As used in this section, "community association" shall mean an unincorporated association or corporation which owns or has under its care, custody or control real estate subject to a recorded declaration of covenants which obligates a person, by virtue of ownership or specific real estate, to be a member of the unincorporated association or corporation.

B. In any proceeding against an officer or director who receives compensation from a community association for his services as such, the damages assessed arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer or director from the association during the twelve months immediately preceding the act or omission for which liability was imposed. An officer or director who serves such an association without compensation for his services shall not be liable for damages in any such proceeding.

C. The liability of an officer or director shall not be limited as provided in this section if the officer or director engaged in willful misconduct or a knowing violation of the criminal law. (1989, c. 422.)

**§ 13.1-871. Director conflicts of interests.**

A. A conflict of interests transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect personal interest. A conflict of interests transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

1. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or ratified the transaction; or
2. The material facts of the transaction and the director's interest were disclosed to the members entitled to vote and they authorized, approved or ratified the transaction; or
3. The transaction was fair to the corporation.

B. For purposes of this section, a director of the corporation has an indirect personal interest in a transaction if (i) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (ii) another entity of which he is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation. A vote or consent of an entity in which the director has an interest described in the preceding sentence is deemed to be a vote or consent of the director for purposes of this section.

C. For purposes of subdivision 1 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect personal interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect personal interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect personal interest in the transaction does not affect the validity of any action taken under subdivision 1 of subsection A of this section if the transaction is otherwise authorized, approved or ratified as provided in that subsection.

D. For purposes of subdivision 2 of subsection A of this section, a conflict of interests transaction is authorized, approved, or ratified if it receives the vote of a majority of the votes entitled to be cast by members whether or not present, that may be counted under this subsection. A director who has a direct or indirect personal interest in the transaction may not vote to determine whether to authorize, approve, or ratify a conflict of interests transaction under subdivision 2 of subsection A of this section. His vote, however, may be counted in determining whether the transaction is approved under other sections of this Act. A majority of the members, whether or not present, who are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section. (Code 1950, § 13.1-223; 1956, c. 428; 1985, c. 522.)

### **§ 13.1-872. Required officers.**

A. A corporation shall have such officers with such titles and duties as shall be stated in the bylaws or in a resolution of the board of directors that is not inconsistent with the bylaws and as may be necessary to enable it to execute documents that comply with subsection F of § 13.1-804.

B. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

C. The secretary or any other officer as designated in the bylaws or by resolution of the board shall have responsibility for preparing and maintaining custody of minutes of the directors' and members' meetings and for authenticating records of the corporation.

D. The same individual may simultaneously hold more than one office in the corporation.  
(Code 1950, § 13.1-226; 1956, c. 428; 1982, c. 372; 1985, c. 522; 1994, c. 189.)

### **§ 13.1-873. Duties of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers. (1985, c. 522.)

### **§ 13.1-874. Resignation and removal of officers.**

A. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, it may fill the pending vacancy before the effective date if the successor does not take office until the effective date.

B. A board of directors may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer. Election or appointment of an officer shall not of itself create any contract rights in the officer or the corporation.

C. Any person who has resigned as an officer of a corporation, or whose name is incorrectly on file with the Commission as an officer of a corporation, may file a statement to that effect with the Commission.

D. Upon the resignation or removal of an officer, the corporation may file an amended annual report with the Commission indicating the resignation or removal of the officer and the successor in office.  
(Code 1950, § 13.1-227; 1956, c. 428; 1985, c. 522; 1990, c. 282; 1991, c. 124.)

### **§ 13.1-875. Definitions.**

In this article:

"Articles of incorporation" includes the bylaws of any corporation created by Act of the General Assembly.

"Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

"Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the

corporation's request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representatives of a director.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; or (ii) when used with respect to an individual other than a director, as contemplated in § 13.1-881, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

"Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. (1985, c. 522.)

#### **§ 13.1-876. Authority to indemnify.**

A. Except as provided in subsection D of this section, a corporation may indemnify an individual made a party to a proceeding because he is or was a director against liability incurred in the proceeding if:

1. He conducted himself in good faith;
2. He believed:
  - a. In the case of conduct in his official capacity with the corporation, that his conduct was in the best interests of the corporation; and
  - b. In all other cases, that his conduct was at least not opposed to the best interests of the corporation; and
3. In the case of any criminal proceeding, he had no reasonable cause to believe that his conduct was unlawful.

B. A director's conduct with respect to an employee benefit plan for a purpose he believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of item b of subdivision 2 of subsection A of this section.

C. The termination of a proceeding by judgment, order, settlement or conviction is not of itself determinative that the director did not meet the standard of conduct described in this section.

D. A corporation may not indemnify a director under this section:

1. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or
2. In connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

E. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

**§ 13.1-877. Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who entirely prevails in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.  
(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

**§ 13.1-881. Indemnification of officers, employees and agents.**

Unless limited by a corporation's articles of incorporation:

1. An officer of the corporation who is not a director is entitled to mandatory indemnification under § 13.1-877, and is entitled to apply for court-ordered indemnification under § 13.1-879.1, in each case to the same extent as a director; and
2. The corporation may indemnify and advance expenses under this article to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

(Code 1950, § 13.1-205.1; 1968, c. 689; 1975, c. 500; 1981, c. 57; 1985, c. 522.)

**§ 13.1-884. Authority to amend articles of incorporation.**

A. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

B. A member of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, purpose, or duration of the corporation. (Code 1950, § 13.1-235; 1956, c. 428; 1985, c. 522.)

**§ 13.1-885. Amendment of articles of incorporation by directors.**

Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of at least two-thirds of the directors in office. The board may adopt one or more amendments at any one meeting.  
(Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522.)

**§ 13.1-886. Amendment of articles of incorporation by directors and members.**

A. Where there are members having voting rights, a corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members.

B. For the amendment to be adopted:

1. The board of directors shall recommend the amendment to the members unless the board of directors determines that because of conflict of interests or other special circumstances it should make no recommendation and communicates the basis for its determination to the members with the amendment; and
2. The members entitled to vote on the amendment shall approve the amendment as provided in subsection E of this section.

C. The board of directors may condition its submission of the proposed amendment on any basis.

D. The corporation shall notify each member entitled to vote of the proposed members' meeting in accordance with § 13.1-842. The notice of meeting shall also state that the purpose, or one of the purposes,

of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

E. Unless this chapter or the board of directors, acting pursuant to subsection C of this section, requires a greater vote, the amendment to be adopted shall be approved by each voting group entitled to vote on the proposed amendment by more than two-thirds of all the votes cast on the amendment by that voting group at a meeting at which a quorum of the voting group exists. The articles of incorporation may provide for a greater or lesser vote than that provided for in this subsection or a vote by separate voting groups so long as the vote provided for is not less than a majority of all the votes cast on the amendment by each voting group entitled to vote on the amendment at a meeting at which a quorum of the voting group exists. (Code 1950, § 13.1-236; 1956, c. 428; 1964, c. 580; 1985, c. 522.)

#### **§ 13.1-892. Amendment of bylaws by board of directors or members.**

A corporation's board of directors may amend or repeal the corporation's bylaws except to the extent that:

1. The articles of incorporation or this chapter reserves this power exclusively to the members; or
2. The members in adopting or amending particular bylaws provide expressly that the board of directors may not amend or repeal that bylaw. (1985, c. 522.)

#### **§ 13.1-893. Bylaw provisions increasing quorum or voting requirements for directors.**

A. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

1. If originally adopted by the members, only by the members;
2. If originally adopted by the board of directors, either by the members or by the board of directors.

B. A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.

C. Action by the board of directors under subdivision 2 of subsection A of this section to adopt or amend a bylaw that changes the quorum or voting requirement applicable to meetings of the board of directors shall meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect. (1985, c. 522.)

#### **§ 13.1-914. Automatic termination of corporate existence.**

A. If any domestic corporation fails to file the annual report required by this chapter in a timely manner, the Commission shall mail notice to it of impending termination of its corporate existence. Whether or not such notice is mailed, if the corporation fails to file the annual report before the last day of the fourth month immediately following its annual report due date each year, the corporate existence of such corporation shall automatically cease as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

B. 1. Any domestic corporation shall pay the annual registration fee required by law on or before the corporation's annual report due date determined in accordance with subsection C of § 13.1-936 of each year. If the corporation pays the annual registration fee for the year assessed after such date of that year, the corporation shall incur a penalty of ten dollars.

2. If any domestic corporation fails to pay by the due date of the year assessed the annual registration fee, the Commission shall mail notice to the corporation of impending termination of its corporate existence.

The corporate existence of the corporation shall be automatically terminated if any such fee is unpaid as of the last day of the fourth month immediately following the due date of that year, and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed to collect the assets of the corporation, and pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business. After paying or adequately providing for the payment of all of its obligations, the trustees shall distribute the remainder of its assets in accordance with § 13.1-907.

C. If any domestic corporation whose registered agent has filed with the Commission his statement of resignation pursuant to § 13.1-835 fails to file a statement of change pursuant to § 13.1-834 within thirty-one days after the date on which the statement of resignation was filed, the Commission shall mail notice to the corporation of impending termination of its corporate existence. If the corporation fails to file the statement of change before the last day of the second month immediately following the month in which the impending termination notice was mailed, the corporate existence of the corporation shall be automatically terminated as of that day and its properties and affairs shall pass automatically to its directors as trustees in liquidation. The trustees shall then proceed as specified in subdivision B 2 of this section.  
(Code 1950, § 13.1-254; 1956, c. 428; 1970, c. 4; 1980, c. 185; 1985, cc. 522, 528; 1987, c. 2; 1988, c. 405; 1991, c. 125; 1997, c. 216; 2000, c. 52.)

#### **§ 13.1-932. Corporate records.**

A. A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its members, in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, if any.

D. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

E. A corporation shall keep a copy of the following records:

1. Its articles or restated articles of incorporation and all amendments to them currently in effect;
  2. Its bylaws or restated bylaws and all amendments to them currently in effect;
  3. Resolutions adopted by its board of directors creating one or more classes of members, and fixing their relative rights, preferences, and limitations;
  4. The minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;
  5. All written communications to members generally within the past three years;
  6. A list of the names and business addresses of its current directors and officers; and
  7. Its most recent annual report delivered to the Commission under § 13.1-936.
- (Code 1950, § 13.1-228; 1956, c. 428; 1975, c. 500; 1985, c. 522.)

#### **§ 13.1-933. Inspection of records by members.**

A. Subject to subsection C of § 13.1-934, a member of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection E of § 13.1-932 if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy.

B. A member of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets

the requirements of subsection C of this section and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

1. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the members, and records of action taken by the members or board of directors without a meeting, to the extent not subject to inspection under subsection A of this section;
2. Accounting records of the corporation; and
3. The record of members.

C. A member may inspect and copy the records identified in subsection B of this section only if:

1. He has been a member for at least six months immediately preceding his demand;
2. His demand is made in good faith and for a proper purpose;
3. He describes with reasonable particularity his purpose and the records he desires to inspect; and
4. The records are directly connected with his purpose.

D. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

E. This section does not affect:

1. The right of a member to inspect records if the member is in litigation with the corporation, to the same extent as any other litigant; or
2. The power of a court, independently of this Act, to compel the production of corporate records for examination. (1985, c. 522.)

#### **§ 13.1-934. Scope of inspection right.**

A. A member's agent or attorney has the same inspection and copying rights as the member he represents.

B. The right to copy records under § 13.1-933 includes, if reasonable, the right to receive copies made by photographic or other means.

C. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

D. The corporation may comply with a member's demand to inspect the record of members under subdivision 3 of subsection B of § 13.1-933 by providing him with a list of its members that was compiled no earlier than the date of the member's demand. (1985, c. 522.)

#### **§ 13.1-935. Court-ordered inspection.**

A. If a corporation does not allow a member who complies with subsection A of § 13.1-933 to inspect and copy any records required by that subsection to be available for inspection, the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

B. If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections B and C of § 13.1-933 may apply to the circuit court in the city or county where the corporation's principal office is located, or, if none in this Commonwealth, where its registered office is located, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

C. If the court orders inspection and copying of the records demanded, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order if the member

proves that the corporation refused inspection without a reasonable basis for doubt about the right of the member to inspect the records demanded.

D. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member. (1985, c. 522.)

#### **§ 13.1-936. Annual report of domestic and foreign corporations.**

A. Each domestic corporation, and each foreign corporation authorized to transact business in this Commonwealth, shall file, within the time prescribed by this chapter, an annual report setting forth:

1. The name of the corporation, the address of its principal office and the state or country under whose laws it is incorporated.

2. The address of the registered office of the corporation in this Commonwealth (including both (i) the post-office address with street and number, if any, and (ii) the name of the county or city in which it is located), and the name of its registered agent in this Commonwealth at such address.

3. The names and post-office addresses of the directors and the principal officers of the corporation.

B. The report shall be made on forms furnished by the Commission, and shall supply the information as of the date of the report.

C. Except as otherwise provided in this subsection, the annual report of a domestic or foreign corporation shall be filed with the Commission by the last day of the twelfth month next succeeding the date it was incorporated or authorized to transact business in this Commonwealth, and by such date in each year thereafter. The report shall be filed no earlier than three months prior to its due date each year. If the report appears to be incomplete or inaccurate, the Commission shall return it for correction or explanation. Otherwise the Commission shall file it in the clerk's office. At the discretion of the Commission the annual report due date for a corporation may be extended, on a monthly basis for a period of not less than one month nor more than eleven months, at the request of its registered agent of record or as may be necessary to distribute annual report due dates of corporations as equally as practicable throughout the year on a monthly basis.

(Code 1950, §§ 13-9, 13-11, 13-32, 13-213, 13.1-282, 13.1-283; 1956, c. 428; 1958, c. 418; 1975, c. 500; 1981, c. 523; 1985, c. 522; 1987, c. 2; 1997, c. 216.)

#### **§ 13.1-936.1. Annual registration fees for domestic and foreign corporations.**

A. Every domestic corporation and every foreign corporation authorized to conduct its affairs in this Commonwealth shall pay into the state treasury by its due date each calendar year an annual registration fee of twenty-five dollars.

The annual registration fee shall be irrespective of any specific license tax or other tax or fee imposed by law upon the corporation for the privilege of conducting its affairs in this Commonwealth or upon its franchise, property or receipts. Nonstock corporations incorporated before 1970 which were not liable for the annual registration fee therefor shall not be liable for an annual registration fee hereafter.

B. The State Corporation Commission shall ascertain from its records each corporation authorized to conduct its affairs in this Commonwealth, as of the first day of the second month next preceding the month of the corporation's annual registration fee due date each year, and shall assess against each corporation the registration fee herein imposed. In any year in which a corporation's due date is extended pursuant to this chapter the registration fee assessment shall be increased by a prorated amount to cover the period of extension. A statement of the assessment, when made, shall be forwarded by the Clerk of the State Corporation Commission to the Comptroller and to each corporation.

C. Any corporation which fails to pay the registration fee herein imposed within the time prescribed shall incur a penalty as provided in subdivision B 1 of § 13.1-914 or § 13.1-930, as the case may be, which shall

be added to the amount of the registration fee. The penalty shall be in addition to any other penalty or liability provided by law.

D. The fees paid into the state treasury under this section shall be set aside as a special fund to be used only by the State Corporation Commission as it deems necessary to defray all costs of staffing, maintaining and operating the office of the Clerk of the Commission, together with all other costs incurred by the Commission in supervising, implementing and administering the provisions of Part 5 (§ 8.9A-501 et seq.) of Title 8.9A, this title, except for Chapters 5 (§ 13.1-501 et seq.) and 8 (§ 13.1-557 et seq.) and Article 6 (§ 55-142.1 et seq.) of Chapter 6 of Title 55, provided that one-half of the fees collected shall be credited to the general fund. The excess of fees collected over the projected costs of administration in the next fiscal year shall be paid into the general fund prior to the close of the fiscal year. (1988, c. 405; 1991, c. 311; 1997, c. 216.)

**§ 13.1-936.2. Collection of unpaid bills for registration fees.**

The registration fee with penalty and interest shall be enforceable, in addition to existing remedies for the collection of taxes, levies and fees, by action in equity, in the name of the Commonwealth, in the appropriate circuit court. Venue shall be in accordance with § 8.01-261. (1988, c. 405.)